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U. S. Citizenship and Immigration Services  
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U.S. Citizenship  
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FILE:

MSC-05-050-10033

Office: LOS ANGELES

Date:

**JUN 08 2009**

IN RE:

Applicant:

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Director, Los Angeles. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet (together comprising the I-687 Application). The director denied the application, finding that the documentation submitted was insufficient to support the applicant's claim of continuous residence in the United States since before January 1, 1982.

On appeal, counsel for the applicant contends that the applicant has submitted sufficient credible evidence to establish her presence in the United States since before January 1, 1982 and throughout the requisite period.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R.

§ 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The sole issue in this proceeding is whether the applicant has furnished sufficient credible evidence to establish by a preponderance of the evidence that she has resided in the United States continuously since before January 1, 1982 and throughout the entire requisite period.

The applicant stated at her interview on July 5, 2005 that she has resided in the United States continuously since December 1981. As evidence, the applicant submitted numerous documents including photocopies of envelopes with stamps from Guatemala mailed to the applicant's residence in the United States from 1984 to 1989, a photocopy of her son's birth certificate showing his birth in the United States in June 1985, a photocopy of her California State identification issued in 1986, and photocopies of various receipts and letters received between 1985 and 1989. Together, these documents show that the applicant has probably resided in the United States continuously since 1985. Nevertheless, the evidence submitted does not support the applicant's contention that she has resided continuously in the United States since before January 1, 1982.

To prove that she has resided continuously in the United States since before January 1, 1982 the applicant provided 12 sworn statements from her friends and past employers. Upon review, the affidavits from [REDACTED] and [REDACTED] do not relate to the requisite period, and thus will not be considered.

[REDACTED] states in her affidavit that she employed the applicant as a babysitter from January 1982 to November 1984. [REDACTED] indicates in her sworn statement that the applicant worked for her as a housecleaner from December 1984 to present (June 1990). Both affidavits

lack probative value as neither [REDACTED] nor [REDACTED] provides specific information about the applicant's employment as prescribed by the regulations at 8 C.F.R. § 245a.2(d)(3)(i). Specifically, both affiants fail to specifically state where the applicant lived during her employment with them, whether official employment records were kept, and whether United States Citizenship and Immigration Service (USCIS) may have access to such records, if any.

[REDACTED] and [REDACTED] both declare that the applicant left the United States to visit her ill father in Guatemala in June 1987 but do not describe with sufficient detail the applicant's residence in the United States during the requisite period. The affidavits are not probative as evidence of the applicant's continuous residence in the United States throughout the entire requisite period.

The letter from [REDACTED] states that [REDACTED] the applicant's father, was hospitalized for five days in May 1987. Considering the evidence of record, the applicant has established that her father was probably sick in 1987.

The affidavits from [REDACTED], and [REDACTED] lack probative value because none of them contains detailed information about the applicant's residence and life in the United States during the requisite period. The affiants generally state that they have known or met the applicant in 1981 or 1982 and further claim that the applicant briefly left the United States in June 1987, but none of them provides detailed information as to the applicant's residence in the United States during the requisite period or offers other details about his or her relationship with the applicant. None states with specificity how he or she first met the applicant in the United States, how he or she dates his or her acquaintance with the applicant, or how often he or she met with or talked to the applicant during the requisite period. To be considered probative and credible, affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period; their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged.

[REDACTED] claims in her affidavit that both the applicant and her husband stayed in her home at [REDACTED] Los Angeles, California from April 1, 1984 to April 30, 1985. However, the applicant indicated on both Forms I-687 filed in 1991 and 2005 that she resided at that [REDACTED] address from December 1981 to October 1985. Neither the applicant nor [REDACTED] has submitted evidence or provided explanation to resolve these inconsistencies. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the application. *Id.* at 591.

Further damaging the credibility of the applicant are the inconsistencies between her testimony and the evidence of record concerning her absences in 1983. The applicant testified under oath during her interview on July 5, 2005 and indicated on her current Form I-687 that she briefly left the United States in June 1983, December 1983, and June 1987. The director noted in her decision that neither the June nor December 1983 departure was listed on her previously filed Form I-687. On appeal, counsel for the applicant contends that the applicant's failure to list her departures in 1983 on the previously filed Form I-687 is insufficient to deny the application. The AAO disagrees. Besides the inconsistencies as noted by the director, the applicant also failed to mention the 1983 departures on the class membership determination form submitted September 8, 1993. Further, none of the affidavits noted above indicates that the applicant left the United States in either June or December 1983. The applicant's testimony, when considered together with other evidence of record, establishes that the applicant resided in the United States for some part of the requisite period; however, it does not prove that the applicant resided in the United States continuously since before January 1, 1982.

The noted inconsistencies in the record, the lack of detail in the witness statements, and the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detract from the credibility of her claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the lack of credible supporting documentation and the inconsistencies in the record, it is concluded that the applicant has failed to establish by a preponderance of the evidence that she has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.